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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-831

Fresh Garlic from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On September 19, 2017, the United States Court of International Trade (the CIT) entered final judgment sustaining the Department of Commerce's (the Department) remand results pertaining to 19<sup>th</sup> antidumping duty administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) for Hebei Golden Trading Co., Ltd. (Golden Bird) and Shenzhen Xinboda Industrial Co., Ltd. (Xinboda), and certain non-examined separate rate companies. The Department is notifying the public that the final judgment in this case is not in harmony with the final results and partial rescission of the 19<sup>th</sup> antidumping duty administrative review, and that the Department has assigned Xinboda and other non-examined separate rate companies Jinxiang Richfar Fruits & Vegetables Co, Ltd. (Jinxiang Richfar); Qingdao Lianghe International Trade Co., Ltd. (Qingdao Lianghe); Shandong Chenhe International Trading Co., Ltd. (Shandong Chenhe); and Weifang Hongqiao International Logistics Co., Ltd. (Weifang Hongqiao) a dumping margin of \$2.19 per kilogram.

DATES: Applicable September 29, 2017.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of

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## SUPPLEMENTARY INFORMATION:

### Background

On June 15, 2015, the Department published the *Final Results* pertaining to mandatory respondents Golden Bird and Jinxiang Hejia Co., Ltd. (Hejia), along with other exporters, including non-examined separate rate companies Xinboda, Jinxiang Richfar, Qingdao Lianghe, Shandong Chenhe, and Weifang Hongqiao.<sup>1</sup> The period of review (POR) is November 1, 2012, through October 31, 2013. In the *Final Results*, the Department relied on total adverse facts available (AFA) with respect to Golden Bird and Hejia, and found Golden Bird and Hejia to be part of the PRC-wide entity.<sup>2</sup> The Department assigned a rate of \$1.82 per kilogram for Xinboda and the other non-examined separate rate companies.<sup>3</sup>

On July 27, 2016, the CIT remanded for the Department to consider evidence on the record concerning Golden Bird's independence from government control to determine whether the company is entitled to separate rate status.<sup>4</sup> The Court ordered the Department to select a separate rate for the non-examined companies "by either employing a different reasonable method to calculate the separate rate, such as reopening the record to examine new mandatory respondents, reopening the record to collect information from which to calculate a reliable separate rate, or if it results in a non-punitive rate for separate respondents, adjusting the separate

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<sup>1</sup> See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 19<sup>th</sup> Antidumping Duty Administrative Review; 2012-2013*, 80 FR 34141 (June 15, 2015) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

<sup>2</sup> See IDM.

<sup>3</sup> *Id.*

<sup>4</sup> See *Shenzhen Xinboda Industrial Co., Ltd., et al., v. United States*, CIT Slip Op. 16-74, Consol. Ct. No. 15-00179 (July 27, 2016) (*Garlic 19 Remand*) at 30.

rate assigned based on the results of remand pursuant to *{Fresh Garlic Producers Association v. United States}*, 180 F. Supp. 3d 1233 (CIT 2016), arising out of the eighteenth administrative review of the AD order on fresh garlic from the PRC (*FGPA II*}).<sup>5</sup>

On April 28, 2017, the Department filed the *Final Remand Results*, continuing to find Golden Bird ineligible for a separate rate.<sup>6</sup> For non-examined separate companies, the Department determined that it would establish their rate by applying the updated separate rate determined in the remand of the 18<sup>th</sup> administrative review, pursuant to *FGPA II*.<sup>7</sup>

On July 17, 2017, the CIT sustained the Department's *Final Remand Results* as to Golden Bird.<sup>8</sup> On September 19, 2017, the CIT sustained the Department's *Final Remand Results* as to the separate rate applied to non-examined companies.<sup>9</sup> Thus, the calculations performed with the new surrogate values resulted in a weighted-average dumping margin of \$2.19 per kilogram and was assigned to Xinboda, Jinxiang Richfar, Qingdao Lianghe, Shandong Chenhe, and Weifang Hongqiao.

#### Timken Notice

In its decision in *Timken*,<sup>10</sup> as clarified by *Diamond Sawblades*,<sup>11</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a

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<sup>5</sup> *Id.* at 30-31.

<sup>6</sup> See Memorandum to The File, “Final Results of Redetermination Pursuant to Remand: Fresh Garlic from the People’s Republic of China, Shenzhen Xinboda Industrial Co., Ltd., et al. v. United States, U.S. Court of International Trade, Consol. Ct. No. 15-00179, Slip Op. 16-74” (April 28, 2016).

<sup>7</sup> *Id.*

<sup>8</sup> See *Hebei Golden Bird Trading Co., Ltd., et al., v. United States*, CIT Slip Op. 17-86, Ct. No. 15-00182 (July 17, 2017).

<sup>9</sup> See *Fresh Garlic Producers Association, et al., v. United States*, CIT Slip Op. 17-127, Consol. Ct. No. 14-00180 (September 19, 2017) (Slip Op. 17-127).

<sup>10</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>11</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

“conclusive” court decision. The CIT’s September 19, 2017, final judgment sustaining the *Final Remand Results* constitutes a final decision of the Court that is not in harmony with the Department’s *Final Results*.<sup>12</sup> This notice is published in fulfillment of the *Timken* publication requirements.

#### Amended Final Results

Because there is now a final court decision, we are amending the *Final Results* with respect to the dumping margin calculated for Xinboda. Based on the *Final Remand Results*, as affirmed by the CIT, the revised dumping margin for Xinboda, from November 1, 2011, through October 31, 2012, is \$2.19 per kilogram. The \$2.19 per kilogram dumping margin also applies to the following separate rate companies: Jinxiang Richfar, Qingdao Lianghe, Shandong Chenhe, and Weifang Hongqiao.

Because the CIT’s ruling was not appealed, it represents a final and conclusive court decision, and the Department will instruct Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise based on the revised dumping margins summarized above.

#### Cash Deposit Requirements

The Department will issue revised cash deposit instructions to CBP, adjusting the cash deposit rate for Jinxiang Richfar and Shandong Chenhe to \$2.19/kg, effective September 29, 2017. The Department will not update the cash deposit requirements for Xinboda, Qingdao Lianghe, and Weifang Hongqiao as they each have later-determined rates from *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 21<sup>st</sup> Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27230 (June 14, 2017).

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<sup>12</sup> See *Final Results*.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

*Dated: December 4, 2017*

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Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

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